

ANALYSIS AND FINDINGS FOR TREE PLAN THREE APPROVAL

TP2005-0025 JEN'S GROVE TREE PLAN MODIFICATION

Section 40.90.05 states the following purpose for Tree Plans:

The purpose of a Tree Plan application is to provide a mechanism to regulate pruning, removal, replacement, and mitigation for removal of significant and historic tree and grove, landscape tree, street tree, and community trees thus helping to preserve and enhance the sustainability of the City's urban forest. This Section is carried out by the approval criteria listed herein.

Section 40.90.15.3.C Approval Criteria

In order to approve a Tree Plan Three application, the decision making authority shall make findings of fact based on evidence provided by the applicant demonstrating that all the following criteria are satisfied:

1. *The proposal satisfies the threshold requirements for a Tree Plan Three application.*

Section 40.90.15.3.A Threshold: An application for Tree Plan Three shall be required when none of the actions listed in Section 40.90.10 or none of the thresholds listed in Section 40.90.15.1 or Section 40.90.15.2 apply and one or more of the following thresholds apply:

- 2. *Residential, Commercial, and Industrial Zoning Districts:***
Removal of greater than 75% of the total DBH of non-exempt surveyed trees within a SNRA or Significant Grove area that is found on the project site.

The applicant does not propose to remove more than 75% of the total DBH of non-exempt trees within the identified Significant Grove #G-86 across the residentially zoned Jen's Grove Subdivision site. The applicant does request to modify the previously approved Tree Plan Three (TP2003-0031) conditions of approval along with thinning, pruning, and hazard tree removal. The Planning Commission rendered an original decision to the Jen's Grove application proposals on August 10, 2004. Modification or removal of conditions of approval requires the same decision making authority that issued the original decision and through the same procedure that originally approved the project. The applicant has elected to include in this Tree Plan Three application the proposal to remove two (2) hazard trees (one tree is an exempt tree under 10 inches in dbh the other is a non-exempt 24 inch Douglas fir tree), thin a row of small fir trees along the southerly property line (under 10 inches dbh), and pruning of other trees within the Significant Grove.

Development Code Section 50.95 *Modification of a Decision* states:

6. *The process type for an application to modify a decision shall be based upon the thresholds for the appropriate application listed in Chapter 40. In all cases, regardless of the thresholds listed in Chapter 40, when a proposed modification involves a condition of approval, that condition of approval can be modified or removed only by the same decision making authority that issued the original decision and through the same procedure that was followed to establish the condition to be modified. Modification or removal of a condition of approval shall only be granted if the decision making authority determines any one of the following (emphasis added):*

- A. The applicant or owner has demonstrated that a mistake of law or fact occurred, and that the mistake was substantial enough to warrant modification or removal of condition to correct the mistake.*
- B. The condition could not be implemented for reasons beyond the control of the applicant and the modification will not require a significant modification of the original decision.*
- C. The circumstances have changed to the extent that the condition is no longer needed or warranted.*
- D. New or modified condition would better accomplish the purpose of the original condition.*

Based upon Section 50.95.6 the Planning Commission may grant the modification or removal of the two (2) conditions of approval if any one of the four (4) criteria are found to be met.

The applicant requests the following conditions of approval TP2003-0031 to be removed or modified:

- **Prior to the first building occupancy permit issuance, the applicant shall:** Ensure the appropriate fee in lieu payment has been submitted and accepted by the City for 881 inches dbh for mitigation not otherwise provided on or off-site.
- **Prior to occupancy permit issuance of each lot subject to the mitigation plan, the applicant shall:** Install trees approved for mitigation as shown on Tree Plan, sheet 6 of 12.

Staff find that the applicant has submitted the appropriate application proposal, Tree Plan Three, in request to modify two (2) conditions of approval associated with the original Tree Plan Three approval, Tree Plan TP2003-0031 Jen's Grove 19-Lot Subdivision.

Therefore, staff find that the criterion is met.

2. *All City application fees related to the application under consideration by the decision making authority have been submitted.*

The applicant paid the required associated fees of \$1,276.00 for a Tree Plan Three application on December 20, 2005. The fees have been submitted; therefore staff find the criterion for approval has been met.

Therefore, staff find that the criterion is met.

3. *If applicable, removal of a diseased tree or a tree is necessary because the tree has been weakened by age, storm, fire, or other condition.*

The applicant's response refers to the applicant's Project Arborist's report prepared by Mr. Terry Flanagan, dated October 23, 2006, Appendix 4 of the applicant's narrative. The report describes that one under 10-inch dbh Douglas fir tree and a Incense cedar tree identified as Tree #943 in which both are located on Lot 4 should be considered hazard trees. The Douglas fir tree does not meet the standard of a surveyed tree of greater than 10 inches dbh. The report describes the weakening trees as being necessary to be removed due to adverse growth conditions and because they have become weakened are being identified by Mr. Flanagan as being a hazard. Staff concurs with the applicant's response from the Project Arborist's findings that these two (2) trees on Lot 4 should be removed as they have become weakened and removal is necessary.

Therefore, staff find the criterion is met and Tree #943 and the Douglas fir tree are recommended for removal to the Planning Commission.

4. *If applicable, removal is necessary to enhance the health of the grove or adjacent tree(s) to reduce maintenance, or to eliminate conflicts with structures or vehicles.*

The applicant's response states that the Project Arborist's report recommends the removal of a line of smaller diameter fir trees along the southern property line at the rear of Lots 5 and 6 which will allow proper development, improve their health,

structure, and aesthetics of the remaining trees. These trees were not included in the original survey as they did not meet the standards for a surveyed tree and are not considered significant trees and were not subject to the original Tree Plan.

The applicant's Arborist also indicates that pruning of dead branches less than one inch in diameter of some of the remaining trees and some 'lift' pruning will be necessary in association with some home construction. The applicant states that the submitted plan of Appendix 6 and photographs 3 and 4 of Appendix 5 depict the trees deemed necessary for pruning. Staff concurs with the applicant's response, that some minor thinning and pruning will assist trees to remain while also being compatible with home construction.

Therefore, staff find the criterion is met and the thinning of trees along the rear yards of Lots 5 and 6 and pruning associated with the plan of Appendix 6 will be recommended for approval to the Planning Commission.

- 5. *If applicable, removal is necessary to observe good forestry practices according to recognized American National Standards Institute (ANSI) A300-1995 standards and International Society of Arborists (ISA) standards on the subject.***

The applicant's response to the criterion states that the Project Arborist is an ISA Board Certified Master Arborist and has made recommendations regarding the future health of all the remaining trees based upon his experience, knowledge, judgment, and credentials. Staff concurs that the Project Arborist is an ISA member and staff accepts the findings written in Mr. Flanagan's October 23, 2005 report, however staff find that the report does not specifically indicate that the removal of trees is in observation of practicing good forestry practices as recognized by ANSI and ISA standards. However, staff find the criterion will be met because the Arborist is ISA certified.

Therefore, staff find the criterion is met.

- 6. *If applicable, removal is the minimum necessary to accommodate physical development because no reasonable alternative exists for the development at another location on the site and variances to setback provisions of the Development Code will not allow the tree(s) to be saved or will cause other undesirable circumstances on the site or adjacent properties.***

The applicant's response to the criterion is that the proposal is to remove of two (2) trees which have been identified as hazard trees. Staff concurs that the applicant's proposal is to remove two (2) hazard trees and that the removal of the trees, tree thinning, or pruning are necessary due setback requirements as established by the Development Code and that this criterion is not applicable.

Therefore, staff find that the criterion is not applicable.

7. *If applicable, removal is necessary because a tree has become a nuisance by virtue of damage to personal property or improvements, either public or private, on the subject site or on an adjacent site.*

The applicant's response to the criterion states that the request to remove Tree #943 is in part because of a request by the neighbor south of the tree, John Day, due to the health and precarious appearance of the tree. The applicant also states that pruning along the south property line is upon request of home owners Jim and Donna Monger to the south because of tree branches overhanging the fence. Staff concurs with the applicant's response as removal and pruning is necessary because the referenced trees present a potential nuisance to adjacent sites even though no evidence has been submitted that the trees have damaged personal property or improvements.

Therefore, staff find the criterion has been met.

8. *If applicable, removal is necessary to accomplish a public purpose, such as installation of public utilities, street widening, and similar needs where no reasonable alternative exists without significantly increasing public costs or reducing safety.*

The applicant's response to the criterion states that the request is not applicable as removal is not for public purposes. Staff concurs with the applicant's response as removal is due to proposed site development.

Therefore, staff find the criterion is not applicable.

9. *If applicable, removal of a tree(s) within a SNRA or Significant Grove will not result in the remaining trees posing a safety hazard due to the effects of windthrow.*

The applicant states that the two (2) trees proposed to be removed currently pose a safety hazard and have been identified by the Project Arborist as should be

removed. The applicant states that removing of the trees will not result in the remaining trees posing a safety hazard due to the effects of windthrow. Staff find that based upon the applicant's submittal and the Project Arborist determining the trees are needed to be removed then staff concurs that the trees can be removed and will not result in the remaining trees posing a safety hazard due to the effects of windthrow.

Therefore, staff find that the criterion is met.

10. If applicable, removal of tree or trees within a Significant Grove will not reduce the size of the grove to a point where the remaining trees may pose a safety hazard due to the effects of windthrow.

The applicant states that the original Jen's Grove Arborist report noted that the removal of the first trees would slightly increase the potential of windthrow of the remaining portion of the grove, but Mr. Flanagan believes that with spacing of the existing trees within the grove will not increase significantly. The removal of the two (2) hazard trees will not reduce the size of the grove to a point where the remaining trees may pose a safety hazard due to the effects of windthrow. Therefore, the impact of the tree removal will be minimal.

Therefore, staff find that the criterion is met.

11. If applicable, removal of a tree within a Historic Grove will not substantially reduce the significance of the grove in terms of its original designation on the list of Historic Groves.

The site does not include an identified Historic Grove.

Therefore, staff find that the criterion is not applicable.

12. Applications and documents related to the request, which will require further City approval, shall be submitted to the City in the proper sequence.

The applicant has submitted the Tree Plan Three application for review. Staff find that the application and documents related to the request have been submitted in proper sequence. Because the application requests a modification to two (2) original Tree Plan Three conditions of approval and the removal of two (2) hazard trees, some fir tree thinning, and tree pruning of trees within the Significant Grove, staff

find that the Commission's review of the application at the public hearing will need to decide on all these specific requests.

Therefore, staff find that the criterion is met.

Section 60.60 Trees and Vegetation

Section 60.60.05 states the following purpose for Trees and Vegetation

Healthy trees and urban forests provide a variety of natural resource and community benefits for the City of Beaverton. Primary among those benefits is the aesthetic contribution to the increasingly urban landscape. Tree resource protection focuses on the aesthetic benefits of the resource. In conjunction with processes set forth in Section 40.90 of this Code, this section is intended to help manage changes to the City's urban forest by establishing regulations and standards for the protection, pruning, removal, replacement, and mitigation for removal of Protected Trees (Significant Individual Trees, Historic Trees, and trees within a Significant Natural Resource Area (SNRA) or Significant Grove), Landscape Trees, and Community Trees.

Staff find the following Sections of Development Code Section 60.60 Trees and Vegetation are applicable to the proposed pruning, thinning, hazard tree removal, and removal of original conditions of approval associated with mitigation plantings and fee-in-lieu.

60.60.15 Pruning, Removal, and Preservation Standards

1. Pruning Standards

- A. *It shall be unlawful for any person to remove or prune to remove a tree's canopy or disturb the root zone of any Protected Tree, except in accordance with the provisions of this Code.*
- B. *All pruning of Protected Trees shall be done in accordance with the standards set forth in this section and the City's adopted Tree Planting and Maintenance Policy, also known as Resolution 3391.*

Staff find that based upon the applicant's submittal, the proposed pruning of the Protected Trees will be done in accordance with the standards set forth in the City's adopted Tree Planting and Maintenance Policy.

2. Removal and Preservation Standards

- A. *All removal of Protected Trees shall be done in accordance with the standards set forth in this section.*
- B. *Removal of Landscape Trees and Protected Trees shall be mitigated, as set forth in section 60.60.25.*

C. *For SNRAs and Significant Groves, the following additional standards shall apply:*

1. *The minimum DBH of non-exempt surveyed trees that must be preserved on a site is as follows:*
 - b) *Residential, Commercial, or Industrial Zoning District: Twenty five percent (25%) of the DBH of non-exempt surveyed trees found on a project site*
2. *DBH to be retained shall be preserved in cohesive areas, termed Preservation Areas, when development is proposed in SNRAs or Significant Groves.*
3. *Native understory vegetation and trees shall be preserved in Preservation Areas.*
4. *Preservation Areas, conditioned for protection through the Development Review process, shall be preserved in clusters that are natural in appearance rather than in linear strips. Preservation Areas should connect with adjoining portions of the Significant Grove or SNRA on other sites.*

Staff find the applicant's proposal to remove one (1) non-exempt surveyed tree and one (1) exempt tree within Significant Grove #G-86 on Lot 4 of the Jen's Grove Subdivision. The applicant also proposes to thin a row of exempt trees along the southern property line of the subdivision. The removal will be in accordance with tree removal standards as set forth in this Code. Mitigation is not required for the removal of the hazard trees or thinning of the exempt trees along the southern property line.

The applicant proposes to remove the previously approved conditions of approval of TP2003-0031. Staff find that the minimum dbh of non-exempt surveyed trees preserved on the residentially zoned site will exceed the 25% requirement and will continue to be located in a cohesive area at the back of Lots 1-8 and at Lots 12 and 15. The original #G-86 Significant Grove extended to the south within the Cruz Meadows and Randall's Brookhaven subdivisions. However, the applicant does not propose the trees to be located in a preservation tract. The original approval was based upon the previous City Tree Ordinance, which did not require the trees to be placed in a Preservation Tract. Cruz Meadows and Randall's Brookhaven subdivisions do not include tree preservation tracts.

6. *Preservation Areas, conditioned for protection through the Land Division process, shall be set aside in tracts and recorded with a deed restriction with Washington County, unless otherwise approved*

by the City. The deed restriction shall prohibit future development and specify the conditions for maintenance if the property is not dedicated to a public agency.

In association with the original recording of Jen's Grove Subdivision, the applicant has recorded a Declaration of Tree Preservation and Maintenance Covenants, Restrictions and Equitable Servitudes document, refer to Appendix 17 of the applicant's written materials. As described in Section 60.60.15.6, the applicant requests the Planning Commission to find that trees to be retained not be located in a Preservation Areas Tract and recorded with a deed restriction with Washington County. The applicant request's the Planning Commission will authorize the trees not be set aside in a Tract through the Code: *"unless otherwise approved by the City."*

Staff find that to meet the intent of the Code and support the applicant's request to remove the two (2) conditions of approval of TP2003-0031, it would be the best option to establish the Significant Grove trees in a Preservation Area Tract in association with the subdivision. Staff understands that it would be difficult to establish a tract now that the Jen's Grove Subdivision has been recorded with Washington County (recording date November 21, 2005) and lots are being sold to new property owners. Staff notes that a Land Division application has not been submitted with this Tree Plan proposal.

Staff Proposes Two (2) Options for Commission's Consideration

Staff has proposed two (2) options for the Planning Commission to consider in response to the applicant's proposal to remove approved conditions of approval. The two (2) options are outlined in a letter to the applicant dated February 9, 2006 from Tyler Ryerson, Exhibit 3.1 of this Staff Report, are located at the end of the findings under "Recommendation" of this Attachment "B," and are briefly described at the beginning of this Staff Report under the section "Recommendations." Staff's conclusions and recommendation options are based on the original approval and associated Tree Ordinance at that time (ORD4224); the current Tree Ordinance (ORD4348) as reflected in Section 60.60 of the current Development Code; the evidence submitted by the applicant for the proposed removal of the conditions of approval; and the existing conditions of Jen's Grove Subdivision.

Staff find that the applicant had exerted efforts working with City staff, the neighborhood, and the applicant's Project Arborist during the layout of the original Subdivision proposal creating buildable lots while retaining as many Significant Grove trees as possible. Establishing a tract for the trees was originally discussed between the applicant and staff during the Subdivision approval process. Ultimately the Planning Commission found that the site layout; tree protection methods proposed and conditioned; the proposed and conditioned on-site tree mitigation and off-site mitigation or payment for fee-in-lieu adequately satisfied the

Commission in meeting the Code requirements at that time. As noted under Section 60.60.25 *Mitigation Requirements* mitigation would not be required by the applicant under today's Tree Ordinance.

To ensure that the City's and community interests are achieved and with the respect to the applicant's request to remove the conditions of approval, Staff's two proposed options are:

- 1) Establish a Preservation Area Tract, Staff find that no additional requirements would be necessary.
- 2) If a Preservation Area Tract is not established then Staff recommend a cash deposit from the developer be placed in an interest bearing account (benefiting the developer) be established with the City. The cash deposit would provide assurance money to replant any Significant Trees which would need to be removed from the Significant Grove. The homeowner or developer would be responsible for the tree removal of any dead Significant Tree located in the Significant Grove if found. A homeowner could go through the applicable Tree Plan application process if tree removal was found to be necessary on their own individual lots. Previous conditions of approval and the Code requirements at the time of removal would need to be considered.

As an example of a similar example that the City has approved in the past: An off-site Giant Sequoia was located abutting the Shipley subdivision development located on SW Main Street. In case any damage occurred to the Sequoia during construction activity, the City required the developer to provide a \$5,000.00 cash deposit to help remove and mitigate for the Sequoia. The cash deposit is to be held for five (5) years and then will be released back to the developer.

Questions for Commission

Staff would want the Commission to consider some questions if the cash deposit option is approved. 1) Those trees whose root zones are impacted by development, should it be the homeowner's or developer's responsibility for removal if adverse affects occur to those trees? 2) How long should that party be responsible for the tree removal? 3) How much should the fee be; should it be a flat fee for the Grove, or be based on a tree by tree count in accordance the City's Fee Schedule for Tree Planting Mitigation?

The Applicant's Response

The applicant has responded to the City's recommendation, letter from Steve McCoy to Tyler Ryerson, dated February 13, 2006, Exhibit 2.2. The applicant proposes a modification to Option 2's recommendation by the City. The proposal is to not deposit approximately \$50,450.00 into an account based upon approximately 1,120 dbh of the Significant Grove Trees to be retained, but instead Mr. McCoy proposes

to provide the City 15% of the \$50,450.00 or approximately \$7,570.00 to the City to cover any adverse affects to the trees in the Significant Grove.

8. *Hazardous and dead trees within Significant Groves and SNRAs should be fallen only for safety and left at the resource site to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and must be removed from the area to protect the remaining trees.*

The applicant proposes to fall and remove from the site two (2) hazard trees. The Code requires hazardous trees within a Significant Grove be fallen and left at the resource site to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and must be removed from the area to protect the remaining trees. The applicant does not believe the trees should be left in the private yards, and because a Preservation Area Tract is not proposed, believes the Code fails to consider this scenario. Staff does not find that evidence has been submitted supporting the fact the two (2) hazard trees are diseased.

Staff does not have a recommendation for the Planning Commission regarding this requirement. Therefore, the Planning Commission must decide if the City should require the hazard trees to be left in the resource area to serve as habitat for wildlife or be allowed to be removed off-site.

60.60.20. Tree Protection Standards During Development

1. *Trees classified as Protected Trees under this Code shall be protected during development in compliance with the following:*
2. *Other City approved protection measures that provide equal or greater protection may be permitted, and may be required as a condition of approval.*

Staff concurs with the applicant that the site's approved tree protection measures as approved by the Planning Commission of TP2003-0031, has served as appropriate protection of the trees during site construction. As building permits get approved and individual home construction begins, the tree protection measures are still in place. The applicant states that the Project Arborist has evaluated the tree protection steps and has determined the protection fencing is, "*well implemented and effectively protected the retained trees.*" Staff find the original approved and conditioned tree protection satisfactorily meets the Code requirement of Section 60.60.20.1.A.2.

- B. *Within the protected root zone of each tree, the following development shall not be permitted:*

1. *Construction or placement of new buildings.*
2. *Grade change or cut and fill, except where hand excavation is approved with the submittal of an arborist's report, as part of application approval.*
3. *New impervious surfaces.*
4. *Trenching for utilities, irrigation, or drainage.*
5. *Staging or storage of any kind.*
6. *Vehicle maneuvering or parking*

Staff concurs with the applicant that these measures will be implemented as the originally approved tree protection measures are still in place and by maintaining the tree protection, the root zones of the Significant Grove trees will be protected from the non-permitted activities as described above.

60.60.25. Mitigation Requirements

1. *The following standards shall apply to mitigation for the removal of Significant Individual Trees or trees within Significant Groves or SNRAs.*
 - A. *All mitigation tree planting shall take place in conformance with accepted arboricultural practices and shall be spaced a minimum of ten (10) feet apart.*
 - B. *As of May 19, 2005, all trees planted for the purpose of tree removal mitigation shall be maintained in accordance with the approved mitigation plan. Monitoring of mitigation planting shall be the ongoing responsibility of the property owner where mitigation trees are located, unless otherwise approved through Development Review. Monitoring shall take place for a period of two (2) years. Trees that die shall be replaced in accordance with the tree replacement standards of this section.*
 - C. *As of May 19, 2005, all trees planted for the purpose of tree removal mitigation shall be set aside in a conservation easement or a separate tract and shall be designated as "Mitigation Trees" and recorded with a deed restriction identifying the trees as "Mitigation Trees".*
 - D. *Each Mitigation Tree planted shall be insured through a performance security, equal to 110 percent of the cost of the landscaping, filed with the City for a period of two (2) years to ensure establishment of the mitigation planting.*
 - E. *Street trees shall not be counted as providing mitigation of a SNRA or Significant Grove.*

- F. Transplanting trees within the project site is not subject to mitigation. However, a performance security is required for transplanted tree(s) to insure that the tree(s) will be replaced if the tree(s) is dead or dying at the end of two (2) years.*
- 2. Mitigation for the removal of trees from Significant Groves or SNRAs shall be required as follows:*
- A. Calculate the total DBH of the trees to be removed. Denote both deciduous and coniferous trees in separate tables; however, both tables will result in the sum total of the DBH to be removed.*
 - B. If the total DBH of trees to be removed is less than or equal to 50% of the total DBH of surveyed trees on the site, then no mitigation is required for the trees to be removed.*
 - C. If the total DBH of trees to be removed is greater than 50% of the total DBH of surveyed trees on site, then mitigation is required for the amount of DBH to be removed that exceeds 50% of the total DBH of surveyed trees on site.*
- 3. In addition to the requirements listed in Section 60.60.25.1 Mitigation Requirements, the following mitigation requirements shall apply for the removal of trees from Significant Groves or SNRAs.*
- A. Dead or dying trees within a Significant Grove or SNRA shall be fallen when required for safety. Such tree falling shall not require mitigation. However, the fallen log should remain in the Significant Grove or SNRA, to serve as habitat for wildlife, unless the tree has been diagnosed with a disease and the log must be removed from the area to protect the remaining trees.*
- 4. Significant Grove or SNRA On-Site Mitigation, 2:1 Planting Ratio.*
- A. Residential, Commercial, or Industrial Zoning Districts: For tree removal proposals which remove more than 50% and up to and including 75% of the surveyed non-exempt DBH, if all mitigation tree planting is to occur on-site, the ratio for planting shall be on a 2:1 basis.*

Staff find that the based upon the current Development Code, the applicant's removal of surveyed non-exempt dbh is less than 50% of the Significant Grove. Applicant's narrative page 21 includes a Table outlining the site's Significant Grove removed and saved trees. Of the on-site parameters of the Significant Grove surveyed in the original Jen's Grove Subdivision approval, approximately 44% of the trees dbh have been removed. Because the tree removal does not equal more than 50% of the surveyed non-exempt dbh, staff find that based upon the current Tree Ordinance no mitigation would be required as outlined in Section 60.60.25.

As discussed in Section 60.60.15.8, staff does not have a recommendation to the Planning Commission for the removal of dead or dying trees to remain in the Significant Grove to serve as habitat for wildlife.

TREE PLAN THREE CONCLUSION

Based on the facts and findings presented, staff conclude the proposal, **TP0005-0025 (Jen's Grove Tree Plan Modification)**, can meet the criteria for approval to prune dead branches up to an inch in diameter on Significant Trees Lots 4 through 8, thin a row of exempt trees located along the southern property line, and remove one non-exempt (1) hazard tree and one (1) exempt hazard tree on Lot 4. Staff also concludes that the Planning Commission will need to determine if the hazard trees are to be felled and remain on the lot to serve as habitat for wildlife or to be removed from the site.

Staff concludes that the removal of the two (2) original conditions of approval can be approved through two (2) options as described in the Recommendation Section of this report, see below. If Option 2 is approved, then the Planning Commission will need to determine if the homeowner or developer will be the responsible party if trees root zones are affected by development; how long is that party held responsible for the damage incurred to the tree(s); and determine if a flat fee should be established for the entire Grove, or be based on a tree by tree calculation, in accordance with the City's Fee Schedule for Tree Planting Mitigation?

RECOMMENDATION

Staff's recommendations for **TP2005-0025 (Jen's Grove Tree Plan Modification)** are as follows:

Approval of:

1. The removal of the Incense cedar identified as Tree #943 located on lot 4.
2. The removal of the Douglas fir tree identified as the tree north of Tree # 615 on Lot 4.
 - The Planning Commission must determine if the felling of the hazard tree is to be left at the site to serve as habitat for wildlife (unless tree is diagnosed with a disease and must be removed from the area to protect the remaining trees) as required by Development Code Sections 60.60.15.2.C.8 and 60.60.25.3.A or should be removed from the site as requested by the applicant.

3. Under the guidance of the Project Arborist, pruning of dead branches less than one inch in diameter of trees within the Significant Grove on Lots 4 through 8.
4. Under the guidance of the Project Arborist thinning of trees along the southern property line of Jen's Grove as identified by the Arborist Report dated October 23, 2005.

Approval options to the proposed removal of two conditions of approval of two conditions of approval of TP2003-0031 (Jen's Grove 19-Lot Subdivision):

Staff recommends the following two (2) options for the Planning Commission to consider for the proposal to remove the conditions of approval from TP2003-0031 (Jen's Grove Subdivision):

Option 1 Recommendation: Place Trees to be Retained in a Preservation Tract

- Trees to remain shall be placed in a Preservation Tract, Section 60.60.15.2.C.6, with applicable deed restriction recorded with Washington County prohibiting future development on the tract with specific conditions for maintenance if the property is not dedicated to a public agency.

Option 2 Recommendation: Cash Deposit for Trees to be Retained

- The Developer will pay a cash deposit equal to the caliper inches of the retained trees. Because the retained trees are not proposed to be located in a Preservation Tract as required by Development Code Section 60.60.15.2.6, the cash deposit will provide assurance money to replant the trees; the homeowner or developer would be responsible for the tree removal of any dead significant tree located in the Significant Grove.
 - The Commission must determine if the cash deposit option is approved:
 - 1) Those trees whose root zones are impacted by development, should it be the homeowner's or developer's responsibility for removal if adverse affects occur to those trees?
 - 2) How long should that party be responsible for the tree removal?
 - 3) Determine if a flat fee should be established for the entire Grove, or be based on a tree by tree calculation as proposed below?
- A homeowner can go through the applicable Tree Plan application process for tree removal as necessary on their individual lot.
- The payment would be in the form of a cash deposit and not a bond. The City of Beaverton will establish an account. Fee based upon the City's Tree Planting Mitigation fee schedule, as of February 22, 2006, – coniferous (2 inches / \$90) deciduous (2 inches / \$175). OR any cash equivalent like an interest bearing account that developer could collect on the interest.

- The deposit will be held for five (5) years from the LAST home occupancy on lots subject to the Significant Grove, namely Lots 1-8 and Lots 12 and 15.
- Return of deposit will be based upon future arborist report submitted to the Director at the of the five (5) year period. The report will assess the health of the trees. Any trees deemed unhealthy may be removed based upon the provisions established here.
- Intent of Code is that if future requests for tree removal on individual lots are is over / under the 50% of on-site (individual parcel) trees, then that particular Tree Plan application and process will be required and shall meet the requirements of the Code.
- Developer will provide a plan depicting the ratio of trees originally removed to trees retained and in conjunction with the Code requirements for tree protection. For example if 1000 inches are in a Significant Grove, and 490 inches are removed, then 10 additional inches can be removed in the future. Once the 50% threshold is reached (500 inches in this example) then the 50% removal mitigation would be required for additional removal.